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KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005			GHERBI, SUZETTE JAIME J	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/701,455

Filing Date: November 06, 2003

Appellant(s): STENZEL, ERIC B.

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Douglas E. Ringel  
For Appellant

## **EXAMINER'S ANSWER**

This is in response to the appeal brief filed September 13, 2006 appealing from the Office action mailed September 23, 2005.

### **(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

### **(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

### **(4) Status of Amendments After Final**

No amendment after final has been filed.

### **(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

### **(6) Grounds of Rejection to be Reviewed on Appeal**

Art Unit: 3738

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 9-10, 12-16, 24-27 are rejected under 35 U.S.C. 103(a) as being obvious over Stoll 6,849,089. Stoll discloses the invention as claimed noting figure 7 comprising: A medical structure (2); a set of first coated pellets (the pellet is the internal

Art Unit: 3738

structure 4" and the coating is the thin surrounding) each of the first coated pellets containing at least one first therapeutic composition, the set of first coated pellets deposited on the structure at a first site for controlled delivery of at least one first therapeutic composition; and a set of second coated pellets, (the second set of pellets can be interpreted as the internal pellet 4"with the thick outer diameter coating adjacent pellets 4" with the thin coating as seen in figure 7) each of the second coated pellets containing at least one second therapeutic composition (the second therapeutic composition is contained in the micro-sphere in a separate second compartment; the set of second coated pellets deposited on the structure at a second site for controlled delivery of the at least one second therapeutic composition to a desired location within the body; wherein each of said first coated pellets is covered with a first coating (the thin coating) and each of said second coated pellets is covered with a second coating (the thick coating); wherein the first coating is thinner than the second coating and has a faster in vivo decomposition rate relative to the second coating to release the first therapeutic composition from the first site faster than the second therapeutic composition from the second site (see col. 13, lines 18-29 and col. 4, lines 1-27); wherein each of the first coated pellets contains a substance in addition to the first therapeutic (see col. 12, lines that states that a "matrix" of a polymer and particles of cell proliferation-inhibiting substance may be used therefore the additional substance is the matrix blend). It is obvious to one having ordinary skill in the art that a matrix comprises more than one substance.

Art Unit: 3738

Claims 5, 11, 17, 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoll in view of Bennett et al. 6,339,130. Stoll has been disclosed above however Stolls adhesive is not described. Bennett et al. teaches that adhesives for use with prosthetic devices are well known and polymers are known adhesive with curing properties (see abstract and col. 3, lines 12-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the adhesive of Stoll with the claimed properties such as polymers because Bennett et al. teaches that they can be used with a variety of surgical devices. Stoll also does not specify that a plurality of sublayers on the micro-spheres. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a plurality of sublayers because Stoll does note that a plurality of layers are contemplated (see figure 5) in order to vary the degradation and release rate of the therapeutic compositions.

#### **(10) Response to Argument**

Applicant's arguments, filed 9/13/04, with respect to the 112 first paragraph rejection have been fully considered and are persuasive. The rejection of claims 1, 4-5, 9-17, 19-21, 23-27 under 112 first paragraph has been withdrawn.

Claims 1,4-5,9-17, 19-21, 23-27 remain rejected under 35 USC §103. Applicant contends that Stoll does not disclose or suggest pellets having different coating

Art Unit: 3738

thickness. The examiner has pointed out figure 7 where clearly illustrations that the walls (5") have varying wall thicknesses. Applicant contends that that Stoll does not disclose an additional "substance". This terminology is broad and is being interpreted as any additional material therefore the "matrix" as disclosed by Stoll does meet the claim limitation. Therefor the substance in addition to the first therapeutic composition if the make-up of the bio-degradable polymer.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

SUZETTE GHERBI  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3700  
Suzette J-J Gherbi

Conferees:

CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700